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SEP 02 2008

In re Application of :  
Combs :  
Application No. 10/603,443 : DECISION  
Filed: 25 June, 2003 :  
Attorney Docket No. RAP-1 :  
:

This is a decision on the petition filed on 14 May, 2008, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition under 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

In the alternative, Petitioner may file a petition under 37 C.F.R. §1.137(b) to revive an application abandoned due to unintentional delay. (Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 C.F.R. §1.137(b).

A petition alleging "unintentional" delay under 37 C.F.R. §1.137(b) must be accompanied by the petition fee, and Petitioner always should refer to the Office website (<http://www.uspto.gov/main/howtofees.htm>) to ensure submission of the proper fees. (A specific fee is not stated here because fee amounts change and there is no way to know when Petitioner will submit materials for filing.)

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

**As to the Request to Withdraw  
the Holding of Abandonment**

Petitioner's attention is drawn to the guidance in the Commentary at MPEP §711.03(c).<sup>1</sup>

<sup>1</sup> The Commentary at MPEP §711.03(c) provides in pertinent part:

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**I. PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based on unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

***A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action***

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner \*\*>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

***B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed***

37 CFR 1.10(c) through 1.10(e) and 1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 CFR 1.10(c), (d), (e), or (g) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

A proper showing (for relief under 37 C.F.R. §1.181):

- (as to non-receipt) requires at the very minimum: a statement from practitioner stating that the Office action was not received by the practitioner; a statement from the practitioner attesting to the fact that a search of the file jacket and docket records for the application indicates that the Office action was not received with a copy of those docket records; and a brief statement of the calendaring process and a copy of the due-date (calendar) docket record(s) where the nonreceived Office action would have been scheduled for reply had it been received must be attached to and referenced in the practitioner's statement; alternatively,
- (for a showing of timely and proper reply) requires a statement from practitioner stating that the reply was timely submitted by the practitioner; and copies of all papers submitted as and/or in support of that reply, with/and a copy of the date-stamped receipt card, Office FAX receipt acknowledgement (not simply Petitioner's FAX transmittal), or EFS receipt acknowledgment from the Office, along with practitioner's attestation as to the correctness/completeness of his/her records.

The showing(s) must include that of the person(s) with first-hand knowledge and an acknowledgment by the Petitioner that he/she has reviewed that information in compliance with his/her duty of candor to the Office. Petitioner has failed to make the showings of search and non-discovery with the documentary presentations discussed herein (and set forth in the footnote,

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Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

37 CFR 1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 CFR 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512.

#### ***C.Treatment of Untimely Petition To Withdraw Holding of Abandonment***

- 37 CFR 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 CFR 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 CFR 1.181(f). Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

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*infra*, and the showings as to docketing and calendaring, again with documentary support—all in support of the averment of nonreceipt..

Petitioner has included nearly 40 pages of records, but due to the absence of detail as to application numbers and transaction occurring/due throughout and as to the docket number and title in many of the items over those 40 pages, it is not possible to interpret and/or evaluate the documents submitted. While Petitioner certainly may redact private financial and/or proprietary information, the documents submitted must at least provide such transparency as might allow the Office to discern what is presented.

### BACKGROUND

The record reflects as follows:

Petitioner failed to reply to the final Office action (copy enclosed) mailed on 25 September, 2007, with reply due absent extension of time on or before 26 December, 2007.

The application went abandoned by operation of law after midnight 25 December, 2007.

The Office mailed the Notice of Abandonment on 3 April, 2008.

On 14 May, 2008, Petitioner filed the instant petition averring, *inter alia*, non-receipt of the Office action in question and supporting that with a statement of Petitioner and of Petitioner's paralegal, along with some 40 pages of documents from Petitioner's docketing system. It is noted, however, that the absence of detail as to application numbers and transaction(s) occurring/due throughout and as to the docket number and title in many of the items within those 40 pages appears to remove the possibility for the Office to interpret and/or evaluate the documents submitted.

Petitioner may redact private financial and/or proprietary information, the documents submitted must at least provide such transparency as might allow the Office to discern what is presented.

Thus, as of this writing Petitioner has not satisfied the requirements discussed at MPEP §711.03(c ), set forth *in extenso* herein and always available online at [www.uspto.gov](http://www.uspto.gov) . Moreover, the petition is set forth in a third-person fashion without the appropriate first-persons statements required.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of

representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>2</sup>

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

### STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

#### Allegations as to the Request to Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.<sup>3</sup> (See, also, the commentary at MPEP §711.03(c)(I)(A) and (B).) And the regulation requires that relief be sought within two (2) months of the act complained of.

Petitioner has not complied with the showing requirements set forth at MPEP §711.03(c)(I)(A) and/or (B).

### CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is dismissed.

### ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See:

[http://www.uspto.gov/web/offices/pac/mpep/documents/0700\\_711\\_03\\_c.htm#sect711.03c](http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c) )

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where

<sup>2</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

<sup>3</sup> See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                    Mail Stop PETITION  
                                  Commissioner for Patents  
                                  P. O. Box 1450  
                                  Alexandria, VA 22313-1450

By hand:                    U. S. Patent and Trademark Office  
                                  Customer Service Window, Mail Stop Petitions  
                                  Randolph Building  
                                  401 Dulany Street  
                                  Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>4</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).



/John J. Gillon, Jr./  
John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

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<sup>4</sup> The regulations at 37 C.F.R. §1.2 provide:

**§1.2 Business to be transacted in writing.**

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,443	06/25/2003	Robert G. Combs	RAP-I	4374
20808	7590	09/25/2007	EXAMINER	
BROWN & MICHAELS, PC 400 M & T BANK BUILDING 118 NORTH TIOGA ST ITHACA, NY 14850			JONES, HEATHER RAE	
		ART UNIT	PAPER NUMBER	
		2621		
		MAIL DATE	DELIVERY MODE	
		09/25/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,443	COMBS, ROBERT G.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Heather R. Jones	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on May 30, 2007.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-14 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-14 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 25 June 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_ .

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments, filed May 30, 2007, with respect to the rejection(s) of claim(s) 1-14 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-7, and 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Laird et al. (6,647,361).

Regarding claim 1, Laird et al. discloses a system for collecting, storing, and reviewing data related to events occurring under the direction of an automated controller, comprising: a) a digital signal capture card for sensing and collecting discrete digital signals as digital data (Figs. 28 and 29 – memory fields 765, 767, and 803; col. 23, lines 62-64; col. 24, lines 3-5; col. 25, lines 16-17 – these memory fields indicate whether the car is a violator or non-violator and the

current traffic light phase); b) a multi-port serial port expansion card for sensing and collecting digital communication messages as serial data (Figs. 28 and 29; col. 23, line 46 – col. 25, line 6 – speeds and times are all collected and stored); c) a video frame grabber and compression card for sensing and collecting video signals as video data (Figs. 28, 29, and 32); d) means for indexing and storing the digital data and video data (Figs. 28 and 29); e) means for relating occurrence of a particular item of a particular data type, whether digital, serial or video, to the most closely time-related data item from the other data types (Figs. 28, 29, and 32 – all data is stored accordingly and displayed together for review); and f) a display for control of the system and presentation of recorded data to a user during review (Fig. 32; col. 26, line 65 – col. 28, line 32).

Regarding claim 3, Laird et al. discloses all the limitations as previously discussed with respect to claim 1 including that the reviewed video data are presented in picture format of still image or time-motion video images (Fig. 32).

Regarding claim 4, Laird et al. discloses all the limitations as previously discussed with respect to claim 1 including that the reviewed serial communication data are presented in time-ordered message sequence (Fig. 32 – details window (820); col. 27, lines 41-52).

Regarding claim 5, Laird et al. discloses all the limitations as previously discussed with respect to claim 1, including that the reviewed serial communication data are presented as recorded in hexadecimal or ASCII format (Fig. 32 displays ASCII characters).

Regarding claim 6, Laird et al. discloses all the limitations as previously discussed with respect to claim 1 including that the reviewed serial communication data are translated according to message parsing rules (Fig. 32 displays the time and information in the correct format – parsing is the process of analyzing a sequence of tokens (codes) to determine its grammatical structure with respect to a given formal grammar).

Regarding claim 7, Laird et al. discloses a system for collecting, storing, and reviewing data related to events occurring under the direction of an automated controller, comprising a display for displaying data, operatively connected to: a) means for sensing and collecting discrete digital signals as digital data (Figs. 28 and 29 – memory fields 765, 767, and 803; col. 23, lines 62-64; col. 24, lines 3-5; col. 25, lines 16-17 – these memory fields indicate whether the car is a violator or non-violator and the current traffic light phase); b) means for indexing and storing the digital signals (Figs. 28 and 29); c) means for sensing and collecting serial digital communication messages as serial data (Figs. 28 and 29; col. 23, line 46 – col. 25, line 6 – speeds and times are all collected and stored); d) means for indexing and storing the serial signals (Figs. 28 and 29); e) means for sensing and collecting video signals as video data (Figs. 28, 29, and 32); f) means for indexing and storing the video signals (Figs. 28 and 29); g) means for relating occurrence of a particular item of a particular data type, whether digital, serial or video, to the most closely time-related data item from the other data types, retrieving and displaying the time-related data

items, according to data the type and data item directed by the user, wherein the display displays each data type, whether digital, serial or video, in a time-synchronized manner, and wherein the user directs a displayed time of any individual data type, whether digital, serial or video, and the remaining two data types are automatically moved to a newly directed time (Figs. 28, 29, and 32 – all data is stored accordingly and displayed together for review; col. 26, line 65 – col. 28, line 32).

Regarding claim 9, Laird et al. discloses all the limitations as previously discussed with respect to claim 7 including that the reviewed video data are presented in picture format of still image or time-motion video images (Fig. 32).

Regarding claim 10, Laird et al. discloses all the limitations as previously discussed with respect to claim 7 including that the reviewed serial communication data are presented in time-ordered message sequence (Fig. 32 – details window (820); col. 27, lines 41-52).

Regarding claim 11, Laird et al. discloses all the limitations as previously discussed with respect to claim 7, including that the reviewed serial communication data are presented as recorded in hexadecimal or ASCII format (Fig. 32 displays ASCII characters).

Regarding claim 12, Laird et al. discloses all the limitations as previously discussed with respect to claim 7 including that the reviewed serial communication data are translated according to message parsing rules (Fig. 32 displays the time and information in the correct format – parsing is the process of

analyzing a sequence of tokens (codes) to determine its grammatical structure with respect to a given formal grammar).

Regarding claim 13, Laird et al. discloses all the limitations as previously discussed with respect to claim 1 including that one or more of said serial digital communication messages are transmitted via serial communication port and wherein said digital signals are asserted via a digital input/output card (Fig. 5).

Regarding claim 14, Laird et al. discloses all the limitations as previously discussed with respect to claims 1 and 13 including that the recorded video is output for viewing (Fig. 32 displays the video being outputted).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laird et al. as applied to claim 1 above, and further in view of Auty et al. (U.S. Patent 5,809,161).

Regarding claim 2, Laird et al. discloses all the limitations as previously discussed with respect to claim 1, but fails to disclose that the reviewed discrete digital data are presented in graphical strip chart format.

Referring to the Auty et al. reference, Auty et al. discloses reviewing traffic information wherein the reviewed discrete digital data are presented in graphical strip chart format (Fig. 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have graphically shown digital data as taught by Auty et al. in the system as disclosed by Laird et al. in order to allow the reviewer to easily correlate related data visually.

Regarding claim 8, Laird et al. discloses all the limitations as previously discussed with respect to claim 7, but fails to disclose that the reviewed discrete digital data are presented in graphical strip chart format.

Referring to the Auty et al. reference, Auty et al. discloses reviewing traffic information wherein the reviewed discrete digital data are presented in graphical strip chart format (Fig. 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have graphically shown digital data as taught by Auty et al. in the system as disclosed by Laird et al. in order to allow the reviewer to easily correlate related data visually.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heather R. Jones whose telephone number is 571-272-

7368. The examiner can normally be reached on Mon. - Thurs.: 7:00 am - 4:30 pm, and every other Fri.: 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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